IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2809 OF 1991

M/s.Shah Diagnostic Institute Private Limited, a Company incorporated under the Companies Act, 1956, having its registered office at Kshamalaya 37, New Marine Lines, Bombay - 400 020 .. Petitioner.

V/s.

1. Union of India.

2. The Assistant Collector of Customs, Air Cargo Complex, having his office at Sahar Andheri (E), Bombay 400 099 .. Respondents.

AND

WRIT PETITION NO.2476 OF 1994

1. M/s.Shah Diagnostic Institute Private Limited, a Company incorporated under the Companies Act, 1956, having its registered office at Kshamalaya 37, New Marine Lines, Bombay - 400 020

2. Dr.Viral Shah of Bombay Inhabitant, being a Director of Petitioner No.1 abovenamed, having his office at 401, Kshamalaya 37, New Marine Lines, Bombay 400 020 .. Petitioner.

V/s.

1. The Union of India

2. The Collector of Customs-II having his office at New Custom House, Ballard Estate, Bombay - 400 038

3. The Assistant Collector of Customs, having his office

at New Custom House, Ballard Estate, Bombay - 400 038 .. Respondents.

Mr.Madhur Baya for the petitioner.

Mr.A.J. Rana, senior counsel with Mr.P.S. Jetly with Mrs.S.V. Bharucha for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 7TH MARCH, 2006.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

These two writ petitions raise identical issues; these were heard together and are being disposed of by this common judgment.

2. In Writ Petition No.2476 of 1994, the petitioner challenges the order dated 28th August, 1994 passed by the Collector of Customs -II, Mumbai whereby he ordered recovery of the amount of duty of Rs.3,82,47,105/- from the petitioner and also imposed a penalty of Rs.10,00,000/-.

3. The facts obtaining in Writ Petition No.2476 of 1994 may be briefly summarised thus :

i) The first petitioner M/s. Shah Diagnostic Institute Private Limited applied and was granted import licence bearing No.P/G/2099659 dated 17th December, 1985 for import of MRI Machine.

ii) Prior to the grant of import licence dated 17th December, 1985 for import of MRI machine, the first petitioner applied for recommendation certificate to the Director of Health Services, Maharashtra. The said application was processed at various levels and ultimately on 7th September, 1989 the Director General of Health Services, New Delhi granted certificate to the petitioner for the benefit of the Notification Nos.279/83-Cus dated 1st March, 1983 and No.63/88-Cus dated 1st March, 1988.

iii) Pursuant to the import licence dated 17th December, 1985 and the certificate issued by the Director General of Health Services, New Delhi regarding satisfaction of the conditions of the Notification Nos.279/83 and 64/88, the petitioners imported one MRI machine in part shipments and cleared the same for home consumption after filing four bills of entry (No.1948 dated 12th March, 1987 and Nos.122 & 123 dated 2nd May, 1988 and 11832 dated 30th May, 1988).

iv) The petitioners applied for exemption under the Notification Nos.279/83 and 64/88. The MRI machine was allowed clearance at nil rate of duty.

4. By the show cause notices dated 14th

December, 1992, 5th June, 1993 and 10th November, 1993, the petitioners were called upon to show cause as to why the duty amounting to Rs.3,82,47,105/- be not levied and recovered for non-levy of the duty and why the MRI machine be not confiscated and penalty be imposed upon the petitioners. Addendum to the said show cause notices were also issued.

5. The petitioners filed reply to the said notices and denied their liability of payment of duty for import of the MRI machine.

6. The petitioners were heard and ultimately by the impugned order dated 28th August, 1994, an order of recovery of the amount of duty in the sum of Rs.3,82,47,105/- was passed and the penalty of Rs.10,00,000/- was imposed. This order, as indicated above, is challenged in Writ Petition No.2476 of 1994.

7. In so far as Writ Petition No.2809 of 1991 is concerned, the petitioners have prayed for clearance of spare parts of MRI machine in terms of Notification No.64/88-Cus dated 1st March, 1988 on production of certificate of the competent authority as required there with some other incidental reliefs.

8. We heard Mr.Madhur Baya, the learned counsel for the petitioners and Mr.A.J. Rana, the learned senior counsel for the revenue.

9. Mr.Madhur Baya, the learned counsel for the petitioner raised the following contentions before us :

a) That clause 3(b) of the Notification No.279/83-Cus dated 1st March, 1983 and clause 2(b) of the Notification No.64/88-Cus dated 1st March, 1988 are unconstitutional and ultravires of Articles 14 and 19(1)(g) of the Constitution of India.

b) That the first petitioner is a diagnostic centre and is covered by the term ‘Hospital’ as given in the explanation to the Notification Nos.279/83 and 64/88 and, therefore, even otherwise eligible to the benefit of the notifications.

c) That the petitioners substantially complied with the conditions of the said notifications and the non fulfilment of the conditions laid down in clauses 3(b) and 2(b) of the Notification Nos.279/83 and 64/88 respectively do not render the petitioners ineligible. According to him, the diagnostic centres cannot meet the criterion of reservation of beds for

its patients. He relied upon the legal maxim LEX NON COGIT AD IMPOSSIBILIA.

d) That the MRI machine has been installed in the premises of Breach Candy Hospital and Research Centre as per the agreement dated 2nd July, 1987 between the petitioners and the Breach Candy Hospital and Research Centre and the Branch Candy Hospital and Research Centre satisfies the conditions of the notifications.

e) That the Notification No.64/88-Cus dated 1st March, 1988 came to an end on 1st March, 1994 and that brought to an end any liability of the petitioners in fulfilling the condition 2(b) of the said notification. According to him, Section 6 of the General Clauses Act has no application.

10. In support of his contentions, Mr.Baya relied upon the judgment of the Supreme Court in the case of Mediwell Hospital and Health Care Pvt.Ltd. V/s. Union of India, 1997 (89) E.L.T. 425 (S.C.) and the judgment of the Madras High Court in the case of Apollo Hospitals Enterprises Ltd. V/s. Union of India, 2001 (133) E.L.T. 58 (Mad.).

11. On the other hand, Mr.A.J. Rana, the learned

senior counsel for the respondents justified the impugned order. The learned senior counsel would submit that on the basis of the declarations made in the bills of entry; the certificate issued by the Director General of Health Services and the endorsement to the effect that the items mentioned therein are essential and exempted from payment of customs duty in terms of the Notification No.64/88-Cus dated 1st March, 1988, clearance was allowed. However, later on it was found that the first petitioner does not have any bed facility for inpatients and that the imported equipment has been installed at Breach Candy Hospital and Research Centre. It is apparent that condition No.3(b) of the Notification No.279/83 and condition No.2(b) of Notification No.64/88 were not satisfied. He would submit that the order dated 28th August, 1994 was passed by the respondent No.2 demanding customs duty in the sum of Rs.3,82,47,105/- and the penalty of Rs.10,00,000/- was imposed. The learned senior counsel for the respondents relied upon the judgment of the Supreme Court in the case of Commissioner of Customs (Import), Mumbai V/s. Jagdish Cancer & Research Centre, 2001 (132) E.L.T. 257 (S.C.).

12. We thoughtfully considered the submissions of the learned senior counsel and counsel for the

parties.

Re : Contention (a)

13. In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962, the Central Government upon its satisfaction and in the public interest and in supersession of earlier notifications, issued Notification No.279/83 Cus dated 1st March, 1983 exempting all medical equipment, apparatus and appliances not manufactured in India and essential for use in specified hospitals from basic import duty and additional duty in respect of the hospitals mentioned in the table appended to the notification on fulfilment of the conditions mentioned therein.

14. Para 3 of the Notification No.279/83-Cus dated 1st March, 1983 under the table, reads thus :

> "3. All such hospital which may be certified by the said Ministry of Health and Family Welfare in each case, to be run for providing medical, surgical and diagnostic treatment not only without any distinction of caste, creed, race, religion or language but also.
>
> (a) free, on an average, to at least 40 percent of all their outdoor patients; and
>
> (b) free to all indoor patients belonging to families with an income of less than rupees five hundred per month, and keeping for this purpose at least 10 per cent of all

the hospital beds reserved for such patients; and

(c) at reasonable charges, either on the basis of the income of the patients concerned or otherwise, to patients other than those specified in clauses (a) and (b)."

15. By further Notification NO.64/88 dated 1st March, 1988, the Central Government issued another exemption notification in respect of the hospital equipments imported by specified category of hospitals (charitable) subject to certification from Director General of Health Services when such equipments / apparatus / appliances were essential for the use in the hospitals specified in the table and upon fulfilment of conditions mentioned therein.

16. Para 2 under the table of the Notification No.64/88-Cus dated 1st March, 1988, reads thus :

"2. All such hospital which may be certified by the said Ministry of Health and Family Welfare, in each case, to be run for providing medical, surgical or diagnostic treatment not only without any distinction of caste, creed, race, religion or language but also

(a) free on an average, to at least 40 per cent of all their outdoor patients; and

(b) free to all indoor patients belonging to families with an income of less than rupees five hundred month, and keeping for this purpose at least 10 per cent of all the hospital beds reserved for such patients; and

(c) at reasonable charges either on the basis of the patients concerned or otherwise

to patients other than those specified in clauses (a) and (b)."

17. The challenge to para 3(b) of Notification No.279/83-Cus dated 1st March, 1983 and para 2(b) of the Notification No.64/88-Cus dated 1st March, 1988 is that the conditions mentioned in the said clauses that all such hospitals which may be certified by the Ministry of Health and Family Welfare shall provide free treatment to all indoor patients belonging to the families with an income of less than Rs.500/- per month and at least 10 per cent of all the hospital beds reserved for such patients are violative of Articles 14 and 19(1)(g) of the Constitution of India being arbitrary and unreasonable. According to the learned counsel, the diagnostic centres by their very nature do not require admission of the patients and the patients can go home immediately after diagnostic treatment and in view of the definition term 'Hospital' given in the notification, the conditions imposed in para 3(b) and 2(b) of the aforesaid notifications respectively regarding free diagnostic treatment to all indoor patients belonging to the families with an income of less than Rs.500/- per month and for this purpose keeping at least 10% of hospital beds reserved is irrational.

18. The contention of the learned counsel for the

petitioners does not appeal us. The petitioners applied for the benefit of the said notifications. As a matter of fact, they represented to the authorities that they fulfilled and/or undertook to fulfil the conditions mentioned in the said notifications and took clearance of the equipment on nil duty. When it came to the notice that the first petitioner has not fulfilled the pre-requisite conditions mentioned in clause 3(b) of the Notification dated 1st March, 1983 and clause 2(b) of the Notification dated 1st March, 1988 an order of recovery of duty and penalty has been passed, the petitioners seek to challenge the constitutionality of the notifications which can not be permitted and shows the dishonesty of the petitioners. As a matter of fact, the petitioners obtained a certificate from the Director General of Health Services as was required under the Notification No.64/88 to the effect that entire treatment facility will be provided to the families with an income of less than Rs.500/- per month whenever made available and for this purpose at least 10% of the hospital beds are reserved. Having got the certificate to that effect from the Director General of Health Services by representing that the treatment facilities will be provided free to all families with an income of less than Rs.500/- per month and for this purpose at least

10% of hospital beds shall be kept reserved, we are of the view that it is not open to the petitioners to challenge the constitutional validity of clause 3(b) and 2(b) of the abovereferred notifications respectively.

19. Even otherwise, looking to the nature of the benefit granted under the notifications whereby the Central Government exempted basic import duty and the additional duty on medical diagnostic equipments and surgical equipments, we find nothing unreasonable on the part of the Central Government to impose condition for the exemption that free medical treatment to all the families with an income of less than Rs.500/- per month shall be given and reservation of at least 10% hospital beds for such inpatients shall be made. The condition imposed in para 3(b) of the notification No.279/83 and para 2(b) of Notification No.64/88 is reasonable and has nexus to the object sought to be achieved. By no stretch of imagination, the said condition can be said to be irrational, arbitrary, unreasonable or bereft of reason. The contention (a) of the learned counsel for the petitioners is, accordingly, rejected.

Re : Contention (b)

20. That the diagnostic institute may be included within the meaning of term ‘Hospital’ as defined in the Notification No.64/88-Cus is not very material for deciding the controversy. The question is not that the diagnostic institute which is included within the meaning of term ‘Hospital’ is eligible for the benefit of the aforesaid notifications, or not. The question is whether the first petitioner meets the eligibility for exemption under the Notification No.64/88. It is not in dispute that the first petitioner - Shah Diagnostic Centre does not have any inpatient bed facilities. The very fact that the first petitioner has not inpatient bed facilities disentitles it from the benefit of exemption notifications. One of the essential conditions in the aforesaid notifications is that the ‘Hospital’ as defined therein must provide free medical and diagnostic treatment to all indoor patients belonging to the families with an income of less than Rs.500/- per month and 10% of its beds should be reserved for such patients. The first petitioner, admittedly, does not have any facility of inpatients and, therefore, obviously cannot fulfil this essential condition. That makes the first petitioner ineligible to the benefit of exemption. As a matter of fact, we find that the petitioners got the certificate from the Director General of Health

Services that the entire treatment facility will be provided free to all families with an income of less than Rs.500/- per month and for that purpose not less than 10% hospital beds are kept reserved by misrepresentation and rather fraud.

21. We, therefore, confirm the finding of the Collector of Customs that the first petitioner was ineligible for the benefit of exemption from payment of customs duty for import of MRI machine under the Notification No.64/88-Cus dated 1st March, 1988.

Re : Contention (c)

22. The contention of the learned counsel for the petitioner that the diagnostic centres cannot meet the criteria of reservation of beds cannot help the case of the petitioners. If they cannot meet the criterion in reservation of beds stipulated by the notifications, surely they are not entitled to the exemption under the said notifications. Even if we assume that the diagnostic centres are included within the definition 'Hospital' as per the explanation set out in the notifications, exemption from payment of basic customs duty is only available upon fulfilment of the conditions stipulated in the notifications. The diagnostic centres (for the

purpose of notification deemed to be 'Hospital') which do not have the facility for inpatients as stipulated in para 2(b) of Notification No.64/88-Cus dated 1st March, 1988, cannot get the benefit of exemption under the said notification. The whole argument of the learned counsel for the petitioner in pressing into service the legal maxim LEX NON-COGIT AD IMPOSSIBILIA and the submission that the diagnostic centre cannot meet the criteria of reservation of beds is wholly misconceived. But for the exemption Notification No.64/88, the duty was payable on the import of MRI machine by the petitioners. For getting the benefits of the exemption notification, the first petitioner has to fulfil the conditions of the said notification. If it cannot, it has to pay the duty.

Re : Contention (d)

23. It is contended that the imported machines have been installed in the premises of the Breach Candy Hospital and Research Centre as per the agreement dated 2nd July, 1987 and that the said Breach Candy Hospital and Research Centre satisfies the condition of the notification. Not only that the contention is misconceived but we find that the design of the petitioners in importing the hospital

equipment (MRI machine) for the purposes of Breach Candy Hospital and Research Centre under purported agreement dated 2nd July, 1987 was dishonest and fraud on the revenue authorities by seeking exemption under the aforesaid Notification No.64/88. Even the certificate that has been obtained by the petitioners from the Director General of Health Services record that the imported diagnostic equipment / apparatus / appliance will be used in the institute itself only and will not be removed therefrom. Such being the condition, how could the petitioners get exemption from payment of duty in importing the equipment in its name for installation at Breach Candy Hospital and Research Centre.

24. In Jagdish Cancer and Research Centre (supra), the three Judge Bench of the Supreme Court held thus :

> "13. ..... In any case, over and above all, it has not been in dispute that the Centre did not have inpatient facility. According to the condition of notification 10% of total beds in hospital are to be kept reserved for patients of the families having an income of less than Rs.500/- per month. The case of the Centre, in this connection, is that they had an arrangement with another hospital in the proximity which is a sister concern of the Centre, with whom the Centre had entered into an agreement for reserving 10 per cent beds. Payments in respect of these inpatients is to be made by the Centre. We feel that the 10 per cent of the total number of beds are supposed to be reserved for patients of such families in the hospital

> where the equipment is installed. The purpose of the notification for grant of exemption from payment of customs duty would not be served by making payment of expenditure incurred on some inpatients in some other hospital as alleged. It has also not been shown that alleged arrangements had the approval of the concerned authority or that it was brought to their notice at all."

25. In the light of the condition incorporated in the certificate issued by the Director General of Health Services and the aforesaid judgment of the Supreme Court, no doubt is left that installing the imported equipment at Breach Candy Hospital and Research Centre and then getting the exemption from payment of duty was not permissible. Whatever arrangement or agreement the first petitioner may have had with the Breach Candy Hospital and Research Centre, such arrangement or agreement shall not absolve the petitioner No.2 from its liability of fulfilment of the conditions prescribed in the Notification No.64/88-Cus dated 1st March, 1988.

26. In so far as the judgment of the Supreme Court in the case of Mediwell Hospital and Health Care Pvt. Ltd. (supra) is concerned, by two later decisions, two parts of the judgment in the case of Mediwell Hospital have been overruled. In the three Judge bench decision in the case of Faridabad CT Scan Centre V/s. D.G. Health Services, 1997 (95) E.L.T. 161 (S.C.), the Supreme Court overruled the Mediwell

Hospital to the extent of invocation of Article 14. In the case of Faridabad CT Scan Centre, the three Judge Bench overruled the Mediwell Hospital (supra) to the extent indicated therein, held thus :

> "3. We fail to see how Article 14 can be attracted in case where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and, therefore, there will be discrimination against others if correct orders are passed against them. In fact, in the case of Union of India (Railway Board) & Others V/s. J.V. Subhaiah and Others [1996 (2) SCC 258], the same learned Judge in his judgment has observed in para 21 that the principle of equality enshrined under Article 14 does not apply when the order relied upon is unsustainable in law and is illegal. Such an order cannot form the basis for holding that other employees are discriminated against under Article 14. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others. With respect, the decision in Mediwell Hospital (supra) does not lay down the correct law on this point."

27. In Sri Sathya Sai Inst., High.Medi. Sciences V/s. Union of India, 2003 (158) E.L.T. 675 (S.C.), the Supreme Court overruled some other part of the Mediwell Hospital where additional conditions were imposed. In Sri Sathya Sai Inst., High.Medi. Sciences, the three Judge Bench of the Supreme Court, held thus :

> "[Order]. - This matter is placed before us as a Bench of this Court differed from the

view expressed by another Bench in Mediwell Hospital & Health Care Pvt.Ltd. v. Union of India & Others - 1997 (1) SCC 759 isofar as it imposes a condition to avail of the benefit of the exemption from payment of import duty in accordance with Exemption Notification No.64/88-Customs, dated 1st March, 1988 to issue an advertisement on monthly basis in a local newspaper that the total number of indigent patients treated free was at least 40% with full particulars and addresses of each of such indigent patient.

2. It is submitted on behalf of the petitioner that conditions for availing exemption had been fulfilled. However, in view of the decision of this court in Mediwell's case, the DGHS asked the petitioner to further comply with the conditions imposed by this Court, as aforesaid. The petitioner contends that fulfilment of such conditions would entail huge expenditure and will unnecessarily add to the burden of the expenses of the hospital in question. A Bench of this Court felt that this Court having laid down guidelines in Para 13 of the judgment for the purpose of the competent authority to ensure that the conditions upon which the exemptions were granted were complied with, it would be unnecessary to have further condition imposed requiring the importers to advertise the same; that mere advertisement in a newspaper would not necessarily establish that importers have in fact complied with the condition or that the statement contained in the advertisement was correct; that further verification, in any event would be

necessary; that the object is to serve the indigent patients and if such object has been carried out without dispute to the full satisfaction of the respondent authority, it was unnecessary burden upon the petitioner to require a monthly advertisement to be published indicating the details of the indigent patients treated by them as directed in the Mediwell's case (supra). It is in those circumstances, disagreeing with the view this matter was referred to a Larger Bench.

3. We have carefully perused the

> judgment of this Court in Mediwell's case and also the order of reference. We are of the view that when it was the prerogative of the Government to grant exemption, it was for them to impose appropriate conditions for the same. If that is so, this Court need not have interposed by reason of an order as made. Therefore, we think it appropriate that the directions issued in Para 14 of the Mediwell's case shall stand overruled. If necessary, the Government may issue appropriate conditions for fulfilment of exemption."

28. To the aforesaid extent, the Mediwell Hospital stands overruled. The observations made in paragraphs 9, 12 and 13 of the Mediwell's case read thus :

> "9. It is true that no importer can claim absolute exemption from payment of customs duty as a right. The normal rule is that every import attracts duty under the Customs Tariff Act unless otherwise exempted by a Notification issued by the Central Government in exercise of power under Section 25 of the Act and the person claiming exemption certificate should establish that the pre-conditions prescribed under the notification are fully satisfied. In the context of the dispute between the parties and on reading the exemption notification as a whole it appears that the government intended to exempt such hospitals from payment of customs duty on import of
>
> equipments which are certified by the Ministry of Health and Family Welfare to the effect that it provides medical, surgical or diagnostic treatment. Thus a Diagnostic Centre run by a private individual purely on commercial basis may not be entitled to the exemption under the notification issued by the Central Government. The conclusion of the Central Government as well as that of the High Court on this score, therefore, may not be held to be incorrect and the appellant may not be entitled to seek for issuance of mandamus to Respondent No.2 on this ground.

12. While, therefore, we accept the contentions of Mr.Jaitley learned senior Counsel appearing for the appellant that the appellant was entitled to get the certificate from Respondent No.2 which would enable the appellant to import the equipment without payment of customs duty but at the same time we would like to observe that the very notification granting exemption must be construed to cast continuing obligation on the part of all those who have obtained the certificate from the appropriate authority and on the basis of that to have imported equipments without payment of customs duty to give free treatment atleast to 40 per cent of the outdoor patients as well as would give free treatment to all the indoor patients belonging to the families with an income of less than Rs.500/- p.m. The competent authority, therefore, should continue to be vigilant and check whether the undertakings given by the applicants are being duly complied with after getting the benefit of the exemption notification and importing the equipment without payment of customs duty and if on such enquiry the authorities are satisfied that the continuing obligation are not being carried out then it would be fully open to the authority to ask the person who have availed of the benefit of exemption to pay the duty payable in respect of the equipments which have been imported without payment of customs duty. Needless to mention the Government has granted exemption from payment of customs duty with the sole object that 40% of all outdoor patients and entire indoor patients of the low income group whose income is less than Rs.500/- p.m. would be able to receive free treatment in the Institute. That objective must be achieved at any cost, and the very authority who have granted such certificate of exemption would ensure that the obligation imposed on the persons availing of the exemption notification are being duly carried out and on being satisfied that the said obligations have not been discharged they can enforce realisation of the customs duty from them.

13. It is needless to reiterate that all the persons including the appellant who had the benefit of importing the hospital equipment with exemption of customs duty

> under the notification should notify in the local newspaper every month the total number of patients they have treated and the 40% of them are the indigent persons below stipulated income of Rs.500/- per month with full particulars and address thereof which would ensure that the application to treat 40% of the patients free of cost would continuously be fulfilled. In the event of default, there should be coercive official action to perform their obligation undertaken by all such persons. This condition becomes a part of the exemption order application and strictly be enforced by all concerned including the Police personnels when complaints of non-compliance were made by the indigent persons, or denial of such treatment in the concerned hospital or diagnostic centres, as the case may be."

29. These observations made in para 9, 12 and 13, in fact goes against the petitioners.

30. The judgment of the Madras High Court in the case of Apollo Hospitals Enterprises Limited does not help the case of the petitioner at all in the facts that we have already indicated above.

Re : Contention (e)

31. Now, we may deal with the last contention of the petitioners that the Notification No.64/88-Cus dated 1st March, 1988 came to an end on 1st March, 1994 and, therefore, the conditions imposed in the said notification came to an end and ceased to be effective. The learned counsel submitted that Section 6 of the General Clauses Act cannot be made

applicable to such notification.

32. This argument of the learned counsel over-looks and ignores Section 159A of the Customs Act which was introduced by the Finance Act, 2001. Section 159A reads thus :

> "159A. Effect of amendments, etc., of rules, regulations, notifications or orders. - Where any rule, regulation, notification or order made or issued under this Act or any notification or order issued under such rule or regulation, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not-
>
> (a) receive anything not in force or existing at the time at which the amendment, repeal,m supersession or rescinding takes effect; or
>
> (b) affect the previous operation of any rule, regulation, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, regulation, notification or order so amended, repealed, superseded or rescinded; or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, regulation, notification or order so amended, repealed, superseded or rescinded; or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty,

> forfeiture or punishment as aforesaid,
>
> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, regulation, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

33. That section 159A is deemed to have been inserted on and from 1st February, 1963 cannot be questioned. It, therefore, has to be held that Section 159A was operating on 1st April, 1994 when the Notification No.64/88-Cus was rescinded. In other words, rescission of the Notification No.64/88 does not affect the liability acquired, accrued or incurred by the petitioners with regard to fulfilment of clause 2(b) of the said notification.

34. We find no merit in both the writ petitions. The petitioners are now directed to pay the duty in the sum of Rs.3,82,47,105/- along with simple interest at the rate of 6% per annum on the said amount from the date of demand and the penalty of Rs.10,00,000/- within four weeks from today. In case the duty is not paid within four weeks, the petitioners shall be liable to pay the simple interest at the rate of 9% per annum on the sum of Rs.3,82,47,105/- from the date of demand.

35. Both the writ petitions are, accordingly, dismissed with costs which we quantify at Rs.10,000/- in each writ petition.

36. Oral prayer for stay is rejected.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)